



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

SSP/148820

PRELIMINARY RECITALS

Pursuant to a petition filed April 16, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access And Accountability in regard to State Supplemental SSI benefits, a hearing was held on June 04, 2013, at Milwaukee, Wisconsin.

The issue for determination is

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Melissa Sherry

Division of Health Care Access And Accountability

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received the state SSI supplement and SSI-E along with federal SSI. On March 19, 2013, the agency issued a Notice of Decision informing the Petitioner that because her federal SSI would end on March 30, 2013, her state SSI would also end.

DISCUSSION

Effective January 1, 1996, the State of Wisconsin began sending out its state supplemental SSI payments separately from federal SSI payments (they had previously been sent out as one check by the Social Security Administration). Petitioner was eligible for state supplemental SSI because she received a federal SSI payment. The statute reads, with the basis for petitioner's eligibility italicized, as follows:

49.77 State supplemental payments.

...

(2) ELIGIBILITY. (a) The following persons who meet the resource limitations and the nonfinancial eligibility requirements of the federal supplemental security income program under 42 USC 1381 to 1383d are entitled to receive supplemental payments under this section:

...

2. Any needy person or couple residing in this state and receiving benefits under federal Title XVI.
3. Any needy person or couple residing in this state whose income, after deducting income excludable under federal Title XVI, is less than the combined benefit level available under federal Title XVI and this section, if at least one of the following requirements are met:
 - a. The person or couple was eligible for a state supplement under this section based on the last federal eligibility determination prior to January 1, 1996, but was not eligible to receive a payment under federal Title XVI on that date.
4. Any essential person.

Wis. Stat., §49.77(2). Petitioner received state supplemental SSI because she was receiving federal SSI (Title XVI). Because her federal SSI has been terminated (a fact that a state administrative law judge cannot change), she cannot qualify for state supplemental SSI pursuant to §49.177(2)(a)2 above or for the SSI-E additional payment. She also does not qualify under any of the other provisions listed, and I could not find any other exception that might allow her to continue to receive the state SSI. Therefore I must conclude that she is not eligible for the state supplemental SSI until and if she again receives federal SSI payments.

At the hearing, the Petitioner testified that she has appealed the federal decision to end her federal SSI benefits. It is not clear what the status of that appeal is. If the Petitioner's federal SSI benefits are reinstated, she will again be eligible for the state SSI supplement. The Petitioner indicates that she believes the federal agency should not have discontinued the SSI benefits just because she also receives widow's benefits.

The Petitioner also indicated at the end of the hearing that [REDACTED] has represented her on these matters. I indicated to the Petitioner that I would contact [REDACTED]'s office and, if [REDACTED] is representing her on these matters, the case would be rescheduled with [REDACTED]. On June 4, 2013, I sent an email and left a voice message with [REDACTED] asking if she represents the Petitioner on this matter. On June 6, 2013, I received a reply from [REDACTED] that her office is not representing the Petitioner on this matter.

CONCLUSIONS OF LAW

Petitioner is ineligible for state SSI because she no longer receives federal SSI.

THEREFORE, it is

ORDERED

The petition for review is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of July, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 1, 2013.

Division of Health Care Access And Accountability
State SSI